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April 4, 2002

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Mr. William Caton
Acting Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

02-77


Re: Petition of Qwest Corporation for Declaratory Ruling Clarifying that the Wholesale DSL Services Qwest Provides to MSN Are Not "Retail" Services Subject to Resale Under Section 251(c)(4) of the Act

Dear Mr. Caton,

Pursuant to my April 3, 2002, letter, I am enclosing an original copy of Mr. Steven K. Starliper's affidavit in the above-referenced matter. Please replace the copy sent yesterday with this original document. As previously indicated, this affidavit should be incorporated into Qwest Corporation's Petition for Declaratory Ruling Clarifying that the Wholesale DSL Services Qwest Provides to MSN Are Not "Retail" Services Subject to Resale Under Section 251(c)(4) of the Act, which was filed with the Commission yesterday.

Thank you in advance for your assistance in this matter. If you have any questions, please do not hesitate to call. I can be contacted at (202) 663-6576.

Yours sincerely,


Robin A. Lenhardt

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Qwest Corporation for)	File No.
)	
Declaratory Ruling Clarifying that the Wholesale)	
DSL Services Qwest Provides to MSN Are Not)	
"Retail" Services Subject to Resale Under)	
Section 251(c)(4) of the Act)	

To: The Commission

**AFFIDAVIT OF VICE PRESIDENT STEVEN K. STARLIPER
IN SUPPORT OF QWEST'S
PETITION FOR DECLARATORY RULING**

1. My name is Steven K. Starliper. I am currently Vice President of Consumer Product Management for Qwest Services Corporation ("Qwest"), a position I have held since October 17, 2001. I submit this affidavit in support of Qwest's Petition for Declaratory Ruling.
2. As Vice President of Consumer Product Management, I have principal responsibility for product management for consumer portfolios, which include voice products and services, as well as long distance and DSL services. As a result, I have direct knowledge of the arrangement for DSL service that exists between Qwest and Microsoft Network, L.L.C. ("MSN"), an Internet service provider ("ISP").
3. Qwest provides DSL services to ISPs and other users pursuant to its federal tariff. Before 2001, Qwest offered DSL on a retail basis only, selling its "Qwest DSL Service" directly to end-user businesses and other customers pursuant to section 8.4.1 of its tariff. See Qwest

Tariff F.C.C. No. 1, § 8.4.1. Under section 8.4.1, end users may choose among a variety of Qwest DSL services at monthly rates set forth in the tariff. Qwest provides these end users with a virtual point-to-point DSL connection through the qualified Qwest DSL Host ISP of their choice. These retail services are *not* at issue in Qwest's petition for declaratory ruling.

4. In December 2000, Qwest amended its federal tariff to provide for Qwest DSL Volume Plan, a bulk DSL product that Qwest offers in addition to its retail DSL product. *See* Qwest Tariff F.C.C. No. 1, § 8.4.4. At the present time, all purchasers of this bulk DSL product are ISPs, which use the product as an input in their own retail offerings to end users. Under section 8.4.4 of the revised tariff, ISPs can purchase DSL service on this wholesale basis under one of four volume plans: the Basic Commitment Option, which provides a discount based on the level of active and billable DSL lines used in a given year, or Volume Commitment Options I, II, and III, which enable the Volume Plan customer to receive a discount based on the volume of DSL lines they commit to buy. Basic Commitment Plan purchasers receive the lowest discounts because they commit to using the lowest number of DSL lines -- 15,000 by the end of the initial 12-month period -- while Volume Plan III purchasers receive the largest discount, having committed to a range of 120,000 to 500,000 lines over a five-year period. Under no circumstances does Qwest provide DSL services at any of these bulk discounts to individual end users on a line-by-line basis. End users seeking retail DSL service from Qwest must instead purchase that service from section 8.4.1 of the tariff, as described above.

5. Under section 8.4.4 of the tariff, ISPs combine Qwest's DSL service with their own Internet access services. They then sell the bundled package to their end-user customers as a new information service. Based on section 8.4.4, ISPs that subscribe to Qwest DSL Volume Plan have very clear obligations to the end users to whom they provide a bundled service.

Among other things, they must provide "customer premises equipment" (such as DSL modems) to end users, deal directly with end users "with respect to all matters relating to the services," and direct end users to contact them, rather than Qwest, "regarding any aspect of the [DSL] service." *Id.* at § 8.4.4. The ultimate responsibilities for these and other services falls on the Volume Plan ISPs, not Qwest.

6. In revising its tariff, Qwest took account of section 51.605(c) of the Commission's rules. Under that provision, "advanced telecommunications services sold to Internet Service Providers as an input component to the Internet Service Providers retail Internet service offering shall not be considered to be telecommunications services offered on a retail basis that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers." 47 C.F.R. § 51.605(c). Both Rule 51.605(c) and the Commission's *Second Report and Order* in CC Docket No. 98-147, *Deployment of Wireline Services Offering Advanced Telecommunications Capability* (1999), provide that DSL services sold to ISPs for inclusion in a bundled Internet access service fall outside the scope of the resale obligations of 47 U.S.C. § 251(c)(4). Qwest thus concluded that it was not obligated to make its bulk DSL service under section 8.4.4 available to competing carriers for resale at discounts greater than the ones already provided through the tariff itself.

7. Before 2001, Qwest offered its own Internet access service to residential end users. In 2001, however, Qwest made a business decision to exit the residential ISP market. Qwest's former market is now served primarily through three large ISPs that purchase DSL from Qwest on a wholesale basis. Each of these ISPs combines Qwest's DSL service with its Internet access services in order to produce a bundled information service that can be provided to end-user customers.

8. In 2001, MSN began purchasing DSL from Qwest on a volume basis, pursuant to the Volume Commitment Plan II set forth in section 8.4.4. Purchasers of the Volume Commitment Plan II typically commit, among other things, to purchasing a minimum of 200,001 subscription lines at the end of a five-year period.

9. Pursuant to section 8.4.4, MSN takes Qwest's DSL service, combines it with its own Internet access service, and sells the bundled package to its end-user customers as "MSN Broadband." Under that arrangement, Qwest is responsible for establishing DSL lines on MSN's behalf and for addressing any service-related problems MSN reports. When Qwest receives an order for DSL from MSN, Qwest technicians connect the identified telephone line to the DSLAM located in either the Central Office or in a remote terminal, and then notify MSN of the virtual circuit ID associated with that DSL service. Under the tariff, however, MSN, not Qwest, has ultimate responsibility for DSL service problems experienced by MSN's end-user customers. On rare occasions, Qwest has interacted with end users on MSN's behalf in order to resolve DSL-related service problems at end users' premises, but only at MSN's direction. If an MSN end user experiences a problem with MSN Broadband, the tariff requires that the end user call MSN, not Qwest, for help isolating and resolving the service problem. Where MSN is unable to resolve the problem or believes that the problem is located in Qwest's DSL lines, MSN, as Qwest's customer of record, is required electronically to submit a "trouble ticket" to Qwest, which will then address and resolve the service issue, e.g., by testing to ensure that the DSL circuit is fully operational through Qwest's facilities.

10. At the time they entered into their agreement under section 8.4.4, Qwest and MSN also entered into a number of agreements for services not covered by the federal tariff. Pursuant

to those agreements. Qwest serves as MSN's agent in several different respects, providing MSN with marketing, billing, and collection services related to its bundled MSN Broadband product.

11. First, Qwest helps MSN market and stimulate sales of MSN Broadband by helping to produce ads, commercials, and fliers regarding the MSN Broadband service. When a customer places an order for MSN Broadband, Qwest transfers the order to MSN, and, upon MSN's request, initiates the steps necessary to establish service. Once this process is complete, MSN configures the customer's system and provides the customer with user identification information and information regarding the use of the MSN Broadband service. MSN also handles any problems that occur once service has been initiated. Qwest receives a commission for each MSN Broadband customer it obtains for MSN.

12. In addition, Qwest provides MSN with billing and collection support. As in the long distance context, end-user customers who purchase MSN Broadband receive the billing statement for that service in their monthly Qwest telephone bill. Like the long-distance charges reflected in a local telephone bill, the charge for MSN Broadband -- a flat fee for the bundled DSL and Internet access service -- is listed separately from any regulated service (such as basic telephone service) that Qwest offers end users on a retail basis. Qwest reports the MSN Broadband charges to MSN's end users. If those end users have any billing questions or concerns, they are instructed to report them directly to MSN, not to Qwest. Where those end users nevertheless request Qwest's assistance with their billing problems, Qwest may make adjustments to billing statements. Qwest, however, does not handle non-payment by end users. MSN, not Qwest, bears the risk of customer non-payment -- *i.e.*, the risk that end users will default on their payment obligations to MSN after MSN has purchased Volume Plan DSL services from Qwest and has included DSL as an input in its MSN Broadband service. In those

circumstances. MSN remains obligated to pay Qwest for the Volume Plan DSL services even though MSN receives no compensation in turn from its end users.

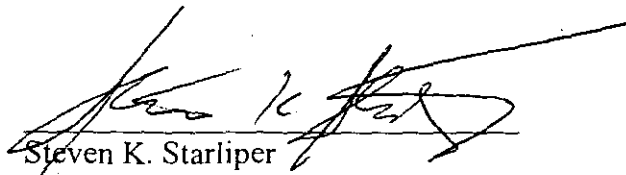
13. The agency agreements between Qwest and MSN do not alter the basic relationship between Qwest and MSN established under the federal tariff. Under those agreements, MSN is Qwest's customer of record, not the end users who purchase MSN Broadband. Those retail customers belong to MSN alone. Qwest has some contact with end users because of the marketing and billing duties it performs for MSN, and the installation status reports it is sometimes asked to provide end users as their MSN Broadband service is being connected. But, with the exception of rare instances in which it must interact with end users on MSN's behalf in order to resolve service-related problems on end-users' premises, Qwest has no contact with MSN end users once their MSN Broadband service is operational.

14. In contrast, MSN still has complete responsibility for its end-user customers once MSN Broadband service has been established, as the federal tariff contemplates. MSN establishes all of the terms for use of the MSN Broadband service. For example, it determines the amount of web space that will be allocated to MSN Broadband users, sets age limits for use of its service, and determines which operating systems must be used with MSN Broadband. MSN also retains all customer information and data, assigns all email addresses, and provides all service-related information to its customers. And, in addition to bearing all non-payment risk, MSN has sole responsibility for customer service and connection. Under the tariff, MSN handles all service-related questions and assists end-users in resolving problems with their equipment and service. Similarly, only MSN, not Qwest, may take a disconnect order from an MSN Broadband end user.

15. Qwest's DSL agreement with MSN covers services provided to customers in 14 states. A determination that Qwest's DSL offering to MSN is subject to resale in one state could have an impact on the services Qwest provides MSN in the other 13 states, as the terms of Qwest's agreement with MSN are the same for each state in which service is provided.

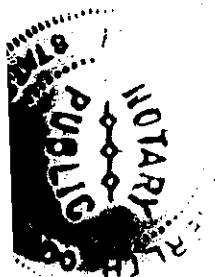
I declare under penalty of perjury that the foregoing is true and correct.


Dated: April 3, 2002


Steven K. Starliper
Vice President for Consumer Product
Management
Qwest Services Corporation

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

Subscribed and sworn to before me, a licensed notary public, on this 3rd day of April
2002.




Notary

My Commission expires: March 6, 2005

CERTIFICATE OF SERVICE

I, John Meehan, do hereby certify that on this 3rd day of April, 2002, I have caused true and correct copies of the foregoing Petition for Declaratory Ruling of Qwest Corporation to be served by hand delivery upon the following parties:

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-201
Washington, D.C. 20554


Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
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Commissioner Kevin J. Martin
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Dorothy Attwood, Chief
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John Meehan